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IN THE
Supreme Court of the United States

JANUARY TERM, 1945

No. **787**

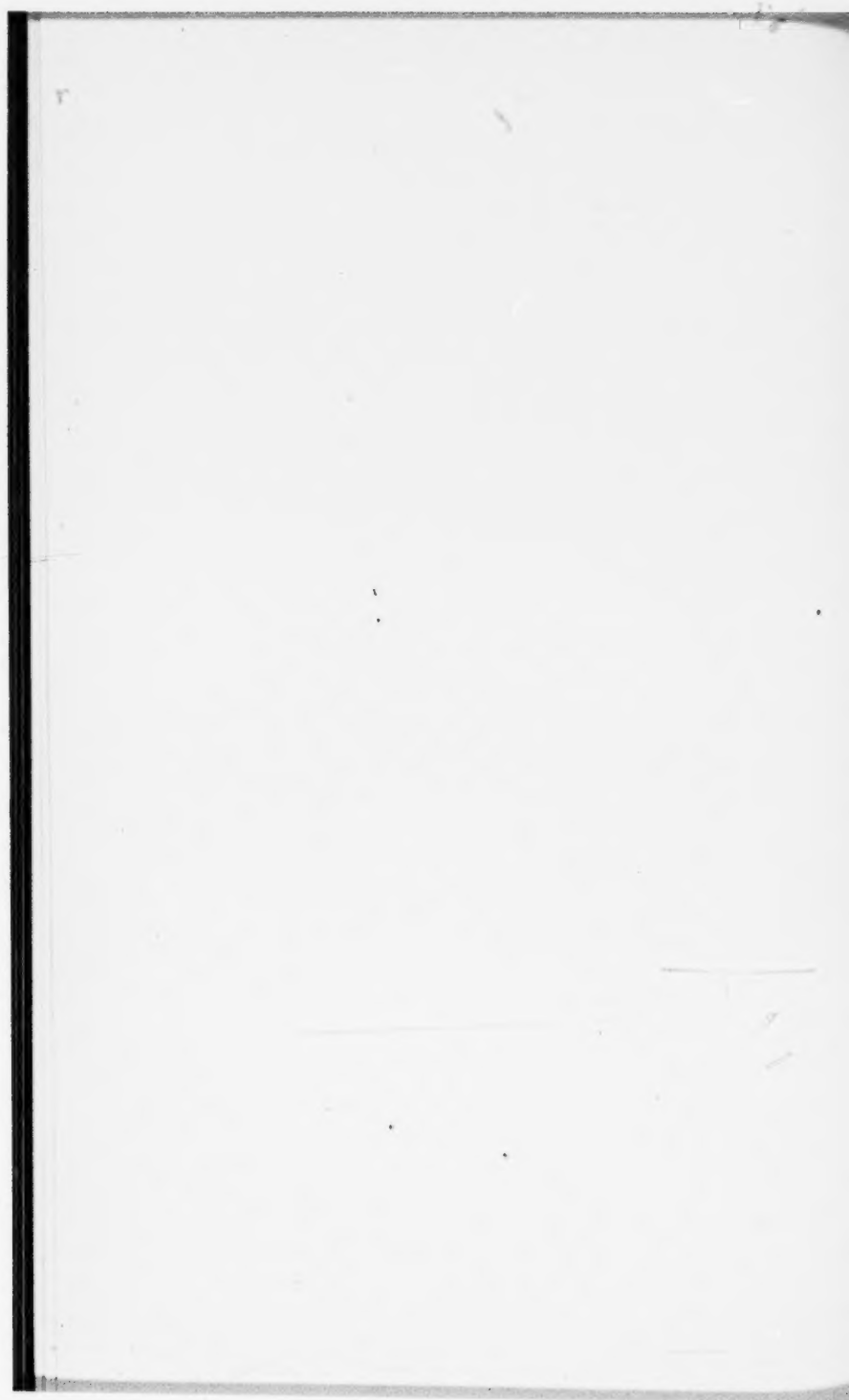
EDWARD LOEW,
Petitioner and Appellant Below,
against

UNITED STATES OF AMERICA,
Respondent and Appellee Below.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT AND BRIEF IN
SUPPORT THEREOF**

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Of Counsel.



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**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

To the Honorable the Supreme Court of the United States:

The petition of Edward Loew respectfully shows:

I

Summary Statement of the Matter Involved

Petitioner was convicted by a jury after a trial in the United States District Court for the Southern District of New York upon an indictment (R. 6) charging him and

three other defendants with the crime of conspiracy (Tit. 18, Sec. 88, *U. S. Code*) to violate Sections 2810, 2811, 2833, and 2834 of Title 26 of the United States Code. These sections require the registration of stills, and regulate the manufacture of distilled spirits.

Petitioner was sentenced to serve a term of six months (R. 4).

Petitioner appealed to the United States Circuit Court of Appeals for the Second Circuit upon the ground, among others, that petitioner had been denied a fair trial in that the Trial Court had permitted in evidence, over objection and exception, inadmissible and prejudicial proof concerning unrelated crimes and acts of wrongdoing. The Circuit Court, in an opinion by Judge SWAN, affirmed the conviction (R. 257).

The question presented is:

Whether it is proper in a criminal trial to put in issue the character of a defendant who does not testify and who produces no other evidence in his behalf. Over objection, there was allowed in evidence testimony by a government witness that defendant had admitted to him the commission of other crimes and acts of wrongdoing unrelated to the crime charged, and had signified his intention to violate the law in the future.

Petitioner is a grocer, and the basis of the charge against him is that he sold sugar to the co-defendants who operated illicit stills. Petitioner did not testify, and produced no witnesses. Nevertheless, over objection and exception (R. 194), Thomas D. Buckley, a government witness attached to the Alcohol Tax Unit (R. 187), was permitted to testify that, on November 6th, 1942, petitioner told Buckley in the latter's office that

"he had sold sugar to bootleggers in the past. . . . and he said he had expected to continue to sell sugar, because there was a very good profit in it; that he was afraid of the OPA that they might put him out of business, but that if his records and books and inventory were examined that no discrepancies would be found, and that he always had someone who could cover him on any sales of sugar which he might make" (R. 194).

A motion to strike that testimony from the record was denied, and an exception noted (R. 209-10).

The aforesaid alleged admissions were made several months after the last overt act alleged in the indictment had been committed; and there was nothing to identify the bootleggers referred to in the admissions as being the bootleggers with whom petitioner was charged with conspiring under the indictment or the evidence.

There was therefore no connection between petitioner's admissions to Buckley and the issues at the trial. They were irrelevant and immaterial.

Apart from its immateriality and irrelevancy, the evidence as to the admissions was highly inflammatory and disparaging of petitioner's character. The reference to petitioner's having someone who could cover him up, branded petitioner as a briber, a corruptor of government officials, and an obstructor and perverter of the due administration of justice. There can be no doubt that the admission of this testimony prejudiced petitioner with the jury when it considered the question of petitioner's guilt or innocence.

There is not the remotest connection between the crime charged and those alluded to in the objectionable testimony. Admissions are properly received in evidence only

when they serve to further the search for the truth in the cause on trial. Everything said by an accused does not necessarily constitute an admission. The Trial Court should have excluded the improper portions of the alleged conversation from the jury's consideration. Its failure to do so prevented petitioner from receiving a fair trial on the issues.

II

Reasons Relied on for Allowance of the Writ

1

The decision of the Circuit Court of Appeals for the Second Circuit is in direct conflict with the applicable law established by the Supreme Court of the United States and by the various Circuit Courts which holds that the character of a defendant is not to be put in issue in a criminal case through proof of unrelated acts of wrongdoing and of an alleged criminal disposition unless the defendant himself puts his character in issue.

2

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Second Circuit directing said Court to certify and send to this Court a full and complete transcript of the record and proceedings of the said Circuit Court, had in the case numbered and entitled on its Docket Calendar No. 53, "United States of America, Appellee v. Edward Loew, Appellant," to the end that

this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that judgment herein of said Circuit Court of Appeals be reversed by this Court; and for such other and further relief as to this Court may seem proper.

Dated: December 22nd, 1944.

EDWARD LOEW,
by HERBERT ZELENKO,
Counsel for Petitioner.

ABRAHAM J. GELLINOFF,
Of Counsel.